

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 18552
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On December 14, 2004, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income taxes, penalties, and interest for the taxable years 2001 and 2002 in the total amount of \$5,525.

On December 20, 2004, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to either the hearing rights letter or the follow-up to the hearing rights letter and has provided no additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information [Redacted] that the taxpayer may have had income reportable to Idaho in 2001. The Bureau researched the Tax Commission's records and found that the taxpayer stopped filing Idaho individual income tax returns after filing a 2000 return. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho income tax returns for 2001 and 2002. The taxpayer did not respond. The Bureau obtained additional information [Redacted] and determined the taxpayer was required to file Idaho income tax returns. The Bureau also found that the taxpayer was married during those years and that the taxpayer's wife had income that was reportable to Idaho.

The Bureau prepared returns for the taxpayer as determined per Idaho's community property law. The Bureau split the income equally and used a filing status of married filing separate. The Bureau sent the taxpayer a Notice of Deficiency Determination which the taxpayer protested. The taxpayer stated he believed the Bureau's tax calculation was based upon a single individual's rates rather than a married individual. The taxpayer asked to have his tax reassessed as married with one minor child in the household.

The Bureau responded back to the taxpayer explaining that his and his wife's income was divided equally between them because of Idaho's community property laws and a married filing separate filing status was used. The Bureau explained that if the taxpayer wanted to file as married filing joint with a dependent exemption he would have to prepare and submit those returns himself. The taxpayer did not provide the returns or respond to the Bureau's letter, so the matter was referred for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer did not respond. The Tax Commission sent a follow-up letter to the taxpayer, but still he failed to respond. Therefore, the Tax Commission issues this decision based upon the information available.

The taxpayer is apparently an Idaho resident; there is nothing in the record to suggest otherwise. The Bureau found sources of income that exceeded the filing threshold of Idaho Code section 63-3030; consequently, income tax returns were required to be filed. The taxpayer did not contest either of these findings by the Bureau. Furthermore, the taxpayer did not contest the amount of income determined by the Bureau.

The taxpayer did indirectly protest the amount of taxable income determined by the Bureau. The taxpayer stated he was married during 2001 and 2002. He also stated there was a minor child present in the household during those years. Both of those facts/statements could affect the taxpayer's taxable income.

The taxpayer stated he was married in those years and that he believed the Bureau's tax computation assessed him as if he were a single person. This is an incorrect belief on the part of the taxpayer. The Bureau's tax computation was based on the rates for a married filing separate individual. The Bureau made the assumption the taxpayer was still married based upon his prior income tax filings. However, the Bureau did not make the election for the taxpayer and his wife of filing a married filing joint return. This election can only be made by the taxpayer and his wife and is generally made by filing a joint return. The Tax Commission cannot make this election for a taxpayer. Therefore, the Tax Commission upholds the Bureau's tax computation based on married filing separate filing status.

The other issue raised by the taxpayer was that there was a minor child living in the taxpayer's household, and presumably the taxpayer believes he is entitled to a dependent exemption for the child. Idaho Code section 63-3002 refers to the Internal Revenue Code (IRC) for the determination of taxable income. Included in the determination of taxable income is the allowance of an exemption amount for dependents of the taxpayer. IRC section 151 allows a taxpayer to deduct an exemption amount for each dependent as defined in IRC section 152. The term "dependent" could include a minor child who has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, if over half of whose support for the calendar year is received from the taxpayer. (IRC section 152(a)(9)).

However, the taxpayer has provided no information about this child. The Tax Commission does not know if the taxpayer provided over half the support for this child or even if the child exists. The taxpayer bears the burden of proving that he is entitled to the deduction and he has not met that burden. Higgins v. Commissioner, TC Memo 1984-330 (1984); U.S. v. Ballard, 535 F.2d 400 (1976). Therefore, the Tax Commission will not allow a dependent exemption deduction for the minor child.

Furthermore, a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous. Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986). The taxpayer has provided nothing to show the returns prepared by the Bureau are incorrect. He has not met his burden of proof. Therefore, the Tax Commission upholds the determination of the Bureau as being a reasonable representation of the taxpayer's taxable income.

The Bureau added interest and penalty to the taxpayer's tax liability. The Tax Commission reviewed those additions and found them appropriate and in accord with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated December 14, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2001	\$1,184	\$ 296	\$293	\$ 1,773
2002	2,838	710	519	<u>4,067</u>
			TOTAL DUE	<u>\$5,840</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.